

1988

Crayton Walker and Jeanne Walker v. Gerald H. Bagley : Brief of Appellant

Utah Court of Appeals

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B. Ray Zoll; Tom D. Branch; Attorney for Plaintiff-Respondent.

Backman; Clark & Marsh; Attorneys for Defendant-Appellant.

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880509 IN THE
UTAH COURT OF APPEALS

CRAYTON WALKER and JEANNE WALKER,
Plaintiffs-Respondents,

vs.

Case No. 88-0509-CA

GERALD H. BAGLEY,

Defendant-Appellant.

#146

APPELLANT'S BRIEF

Appeal from the Judgment of the
Third Judicial District Court of Salt Lake County
Honorable Pat B. Brian, Judge

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STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this court by §78-2a-3(2)(h), U.C.A. This appeal is from a final order of the District Court of the Third Judicial District of Salt Lake County, State of Utah. The order to be reviewed is a Charging Order entered June 24, 1988. The Notice of Appeal was filed July 22, 1988. This case was transferred by the Supreme Court of Utah to the Court of Appeals on August 25, 1988.

ISSUES PRESENTED FOR REVIEW

POINT I

BEFORE A CHARGING ORDER MAY BE ENTERED AGAINST THE INTEREST OF A PARTNER IN A PARTNERSHIP, THE PARTNERSHIP MUST BE (a) JOINED AS A PARTY AND/OR (b) GIVEN NOTICE OF A MOTION FOR THE CHARGING ORDER AND AN OPPORTUNITY TO BE HEARD.

POINT II

BECAUSE THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE LOWER COURT'S DETERMINATION THAT A CHARGING ORDER SHOULD BE ENTERED, THE CHARGING ORDER MUST BE REVERSED.

POINT III

THE CHARGING ORDER ENTERED IN THIS CASE WAS TOO BROAD IN ORDERING PAYMENT TO WALKERS OF MORE THAN BAGLEY'S SHARE OF PROFITS AND SURPLUS FROM THE PARTNERSHIP AND IN ORDERING DISCLOSURE OF TRANSACTIONS AND TAX RETURNS OF THE PARTNERSHIP PRIOR TO THE DATE OF THE CHARGING ORDER.

STATUTES AND RULES TO BE INTERPRETED

Utah Rules of Civil Procedure

Rule 55. Default.

. . . .

(b) Judgment.

. . . .

(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

Rule 56. Summary Judgment.

. . . .

(c) Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Utah Code

§48-1-22. Nature of a partner's right in specific partnership property.

. . . .

(2) The incidents of this tenancy are such that:

. . . .

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property

is attached for a partnership debt, the partners, or any of them, or the representative of a deceased partner, cannot claim any right under the homestead or exemption laws.

§48-1-23. Nature of partner's interest in the partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

§48-1-24. Assignment of partner's interest.

A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, or, as against the other partners in the absence of agreement, entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

In case of a dissolution of a partnership, the assignee is entitled to receive his assignor's interest, and may require an account from the date only of the last account agreed to by all the partners.

§48-1-25. Partner's interest subject to charging order.

(1) On due application to a competent court by any judgment creditor of a partner the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners; or,

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership.

§48-2-18. Nature of limited partner's interest in partnership.

A limited partner's interest in the partnership is personal property.

§48-2-19. Assignment of limited partner's interest.

A limited partner's interest is assignable.

A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

An assignee who does not become a substituted limited partner has no right to require any information on account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income or the return of his contribution, to which his assignor would otherwise be entitled.

An assignee shall have the right to become a substituted limited partner, if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 48-2-25.

The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities, of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 48-2-6 and 48-2-17.

§48-2-22. Rights of creditors of limited partner.

(1) On due application to a court of competent jurisdiction by any creditor of a limited partner the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim, and may appoint a receiver, and make all other orders, directions and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemptions.

§78-22-1. Lien of judgment.

From the time the judgment of the district court or circuit court is docketed and filed in the office of the clerk of the district court of the county it becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county in which the judgment is entered, owned by him at the time or by him thereafter acquired during the existence of said lien. A transcript of judgment rendered in a district court or circuit court of this state, in any county thereof, may be filed and docketed in the office of the clerk of the district court of any other county, and when so filed and docketed it shall have, for purposes of lien and enforcement, the same force and effect as a judgment entered in the district court in such county. The lien shall continue for eight years unless the judgment is previously satisfied or unless the enforcement of the judgment is stayed on appeal by the execution of a sufficient undertaking as provided by law, in which case the lien of the judgment ceases.

IN THE
UTAH COURT OF APPEALS

CRAYTON WALKER and JEANNE WALKER,

Plaintiffs-Respondents,

vs.

Case No. 88-0509-CA

GERALD H. BAGLEY,

Defendant-Appellant.

APPELLANT'S BRIEF

STATEMENT OF THE CASE

Nature of the Case

This is a proceeding by the plaintiffs, Crayton and Jeanne Walker (hereinafter "Walkers"), to obtain a charging order against the interest of the defendant, Gerald H. Bagley (hereinafter "Bagley"), in a partnership known as Jordan Acres (hereinafter "Partnership") following a stipulation as to a judgment against Bagley. Bagley opposed the entry of a charging order on the grounds that the Partnership was not joined as a party nor given notice of the motion for the charging order, there was no affidavit or evidence of any kind as to the existence of a partnership or of the interest of Bagley in such a partnership, and the motion sought a charging order which was too broad.

Disposition in the Lower Court

After several hearings as to the propriety and the form of the proposed charging order, the lower court granted

Walkers' motion for a charging order and a Charging Order was signed and filed on June 24, 1988. Bagley's objections to the Charging Order were denied and an appeal from the order was filed on July 22, 1988.

Statement of Facts

Walkers initially obtained a default judgment against Bagley and The Jeremy on June 28, 1985 (R. 20-21), which was faulty because of lack of service on the general partner of The Jeremy (the other defendant in this action), because it combined the amounts claimed against each defendant in the complaint as a total against both defendants and because of failure to comply with Rule 55(b)(2), Utah Rules of Civil Procedure (R. 42-45). After several hearings on motions to set aside the judgment and on Orders in Supplemental Proceedings attempting to enforce the Judgment, Walkers and Bagley stipulated that an Amended Judgment would be entered against Bagley in the amount of \$7,500.00. That stipulation was filed on January 23, 1986 (R. 70) but the Amended Judgment has not been filed.

On February 4, 1988, Walkers filed a Motion for Charging Order seeking to obtain a charging order upon the alleged interest of Bagley in a limited partnership named Jordan Acres (R. 82). The Partnership itself was not joined as a party nor was it given notice of the motion nor the hearing thereon. The motion was not supported by affidavit nor by evidence of any kind as to the existence of the Partnership

nor of the interest of Bagley in the Partnership (R. 82-85). Despite the lack of any evidence upon which a charging order could be based and despite the lack of notice to or joinder of the Partnership, and after objections to the motion and proposed order were made by Bagley, the lower court granted the motion and entered a charging order on June 24, 1988 (R. 121-3).

The Charging Order goes beyond ordering payment of Bagley's share of profits and surplus of the Partnership as of the date of the Charging Order and orders payment to Walkers of "all profits, income, payments from the Partnership payable to Gerald Bagley and any right of any kind to receive any asset from the Partnership, regardless of whether distributed from capital, profits, or surplus, or as an expense of the Partnership" and further orders disclosure of "all assets sold or transferred by the Partnership since entry of Judgment on June 28, 1985" and all of the Partnership's tax returns for the years 1985 through 1987.

SUMMARY OF ARGUMENT

POINT I. The Uniform Partnership Act allows for a charging order against the interest of a partner in a partnership only upon "due application" which requires that notice of a motion for charging order be given to all persons who might be affected by a charging order, including the partnership itself or the non-defendant partners, and that a hearing be held so that all such persons have an opportunity

to be heard. In this case no notice was given to such persons. The only notice given was the mailing of copies of the motion and the notice of hearing to the attorney for Bagley, the defendant-partner. The Charging Order issued in this case is, therefore, invalid.

POINT II. A motion for a charging order is a request for a summary determination that the moving party is entitled to a charging order and it must be supported by evidence of undisputed facts which justify the order as a matter of law. In this case the Walkers' motion was not supported by an affidavit or other evidence of any kind. There is no evidence before the court that the Partnership which is the subject of the Charging Order even exists or that Bagley has an interest in the Partnership. Those facts are essential to the issuance of the Charging Order. In the absence of such evidence, the Charging Order must be set aside.

POINT III. A charging order is a charge against the interest of the debtor in a partnership. It does not make the creditor a partner and does not entitle him to participate in the management nor to interfere with the operations of the partnership. It entitles him to receive the profits and surplus from the partnership which the debtor-partner would otherwise receive. The Charging Order entered in this case goes far beyond that in requiring payment to Walkers of more than profits and surplus and in requiring the Partnership to report all assets sold or transferred since June 28, 1985 and to deliver copies of tax

returns since 1985. The Charging Order is only effective from its date and cannot affect transactions that took place prior thereto. It is also effective only against the interest of Bagley in the Partnership, if any, and not against the assets of the Partnership itself. Any charging order properly issued in this case, after notice, hearing and presentation of necessary evidence, should be limited to the extent of the charge allowed and the information required to be disclosed by the statute.

ARGUMENT

POINT I

BEFORE A CHARGING ORDER MAY BE ENTERED AGAINST THE INTEREST OF A PARTNER IN A PARTNERSHIP, THE PARTNERSHIP MUST BE (a) JOINED AS A PARTY AND/OR (b) GIVEN NOTICE OF A MOTION FOR THE CHARGING ORDER AND AN OPPORTUNITY TO BE HEARD.

Charging orders are available to judgment creditors only pursuant to §48-2-22, U.C.A., as to limited partnerships, and pursuant to §48-1-25, U.C.A., as to general partnerships. Both of those sections allow charging orders to be issued only "on due application to a" court of competent jurisdiction. "Due application" has been interpreted to require adequate notice to all persons whose rights might be adversely affected by the granting of the relief sought. Under a statute identical to the Utah statute, the Colorado Supreme Court has held "due application" to require notice to all partners, including those not parties to the suit, and a hearing before a charging order may be issued. See Phillips

v. Phillips, 155 Colo. 538, 400 P. 2d 450 (1964), where the mailing of a copy of a motion for a charging order to the attorneys for the debtor-partner whose interest was sought to be charged was held insufficient, and First National Bank of Denver v. District Court, 652 P. 2d (Colo. 1982), where the failure to give notice to non-defendant partners of the partnership and the failure to conduct a hearing on the motion prevented enforcement of a charging order. That a hearing after notice to all affected parties is prerequisite to a charging order is the position taken in 59A Am. Jur. 2d, Partnership, §791, at p. 626, where it is stated:

"Under the terms of the Uniform Partnership Act, a hearing is conducted on a judgment creditor's application for an order charging a partner's individual interest in his partnership with the obligation of that partner's unsatisfied judgment debt. It should be an adversary hearing as to the nondebtor partners, where they are directed to appear and show cause why the partnership interest should not be charged. The nondebtor partners may be estopped to question the affirmative findings of the court in that hearing where they appear and are represented but fail to contest the proceedings or appeal an adverse decision."

In this case the Walkers did not give notice to the Partnership nor to the other partners in the Partnership. The only notice given was the mailing of copies of the motion and notice of hearing to the attorney for Bagley (R. 81, 84-5), a procedure which the Phillips case, supra, held to be inadequate. Because of the nature of partnership property and the possible adverse impact on non-defendant partners, the lower court should have conducted a hearing after proper

notice to all affected parties. The failure to follow that procedure requires that the Charging Order be reversed.

POINT II

BECAUSE THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE LOWER COURT'S DETERMINATION THAT A CHARGING ORDER SHOULD BE ENTERED, THE CHARGING ORDER MUST BE REVERSED.

It is elementary that any order of the court must be based on evidence submitted to the court which would justify the order. The parties seeking relief have the burden of proof to show that facts exist which entitle them to the relief requested. If there is no evidence before the court, there is no basis on which the court may grant the requested relief. Even in entering default judgments, the court is obligated, except where the relief sought is for a sum certain, to take evidence or make an investigation "to establish the truth of any averment." Rule 55(b)(2), U.R.C.P.

Although Walkers' Motion for Charging Order was not phrased as a motion for summary judgment, that is the substance and effect of their motion. By their motion they requested the court to summarily issue a charging order but without supporting affidavits or evidence of any kind. Rule 56(c) U.R.C.P., provides that:

"[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Rule 56(e) U.R.C.P., requires that any affidavits submitted to support a motion for summary judgment:

"shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

In this case there are no depositions, answers to interrogatories, admissions or affidavits from which any facts could be gleaned which would justify the issuance of a charging order. There is absolutely no evidence as to the existence of the Partnership nor as to the interest of Bagley in the Partnership. Surely, those are essential facts to the issuance of a charging order. Without those facts, there is no basis in the record for the issuance of a charging order.

POINT III

THE CHARGING ORDER ENTERED IN THIS CASE WAS TOO BROAD IN ORDERING PAYMENT TO WALKERS OF MORE THAN BAGLEY'S SHARE OF PROFITS AND SURPLUS FROM THE PARTNERSHIP AND IN ORDERING DISCLOSURE OF TRANSACTIONS AND TAX RETURNS OF THE PARTNERSHIP PRIOR TO THE DATE OF THE CHARGING ORDER.

Under the Uniform Partnership Act, in effect in Utah, as provided in §48-1-23, U.C.A.:

"A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property."

And, if a partner assigns his interest in a partnership to another party, that assignment:

"does not of itself dissolve the partnership, or, as against the other partners in the absence of agreement, entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership

business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled. (§48-1-24, U.C.A.)

If the assignment is of an interest in a limited partnership, then the:

"assignee who does not become a substituted limited partner has no right to require any information on account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income or the return of his contribution, to which his assignor would otherwise be entitled. (§48-2-19, U.C.A.)

A creditor of a partner who obtains a charging order is, in effect, taking, by judicial process, an assignment of the debtor-partner's interest in the partnership. The creditor does not thereby become a partner and is not thereby entitled "to require any information on account of partnership transactions or to inspect the partnership books; he is only entitled to receive the share of profits or other compensation by way of income" of the debtor partner. Sections 48-1-25 and 48-2-22, U.C.A. authorize the court to charge the interest of the debtor partner, that interest being his "share of the profits and surplus." Therefore, a charging order which goes beyond that is contrary to the statute and is clearly too broad. The Charging Order issued by the lower court obviously goes beyond the statutory authorization when it orders:

"[a]ll profits, income, payments from the Partnership payable to Gerald Bagley, and any right of any kind to receive any asset from the

Partnership, for any purpose, regardless of whether distributed from capital, profits, or surplus, or as an expense of the Partnership, shall be paid to and inure to the benefit of the plaintiffs" (R. 122, para. 2)

The order is further beyond statutory authorization in ordering the Partnership, a non-party, to:

"make a full statement and accounting to the plaintiff of:

(a) The interest of the judgment debtor Gerald Bagley in the profits, losses, capital, and surplus of the Partnership;

(b) The value of the Partnership's assets, determined either by appraisal or by good faith estimate of the Partnership, and the amount of the Partnership's liabilities (with a reasonable itemization of the amounts of any significant liabilities of the Partnership), and the net worth of the Partnership;

(c) A report of all sources of income of the Partnership, the amount of income derived from each such source, and the expenses generated by and properly attributable to each such source of income;

(d) A report of all assets sold or transferred by the Partnership since entry of the Judgment on June 28, 1985 and of any liens or interests created in the Partnership's property since entry of the Judgment, and a full report of all other significant changes in the financial position of the Partnership since entry of the Judgment.

The Partnership shall also provide to the Plaintiffs a copy of the Partnership's federal income tax returns for the years 1985 through 1987, inclusive. (R. 122-3, para. 3 and 4)

The Charging Order requires disclosure of information going back to the date of Walkers' judgment, and earlier, as if that judgment represented a lien against both Bagley's interest in the Partnership and the property of the Partnership itself. Judgments, of course, are liens only

against the real property of the debtor (§78-22-1, U.C.A.) and not against personal property. Since the partnership statutes (§§48-1-23 and 48-2-18, U.C.A.) make interests in partnerships personal property, there was no lien against any interest of Bagley in the Partnership until the entry of the Charging Order. And, of course, neither the judgment against Bagley nor the Charging Order represent any kind of a lien against the property of the Partnership itself. (See §48-1-22(2)(c)). To require the Partnership to make a report of all assets sold or transferred since June 28, 1985 and to provide tax returns from 1985 through 1987 goes beyond anything Walkers might be entitled to know about the Partnership.

Reason suggests that Walkers, assuming they were entitled to a charging order at all, should be entitled to know the interest of Bagley, if any, in the Partnership's profits and surplus and to know of any distributions of profits or surplus about to be made by the Partnership. Any order to disclose more than this is unauthorized by the statute and could be detrimental to the interests of non-defendant partners and of the Partnership itself. Since the Charging Order obtained by Walkers goes far beyond what is authorized by statute, it should be set aside.

CONCLUSION

The Charging Order was issued without notice to the Partnership or the non-defendant partners and without any evidence as to the existence of a partnership or of Bagley's interest therein. There is, therefore, no basis in the record for a charging order of any kind. The Charging Order further requires far more than disclosure of and a charge against the profits and surplus due Bagley from the Partnership that is authorized by statute. Any charging order which may be issued, after proper notice, hearing and evidence, should be limited to the profits and surplus due Bagley from the Partnership.

Respectfully submitted,

BACKMAN, CLARK & MARSH

By



Ralph J. Marsh

Attorneys for Appellant

PROOF OF SERVICE

THIS IS TO CERTIFY that four (4) true and correct copies of the foregoing Appellant's Brief were mailed, postage prepaid, on the 23rd day of December, 1988, to the following:

B. RAY ZOLL and
TOM D. BRANCH
Attorneys for Plaintiffs
Suite 360
5300 South 360 West, 3rd Floor
Salt Lake City, Utah 84123



ADDENDUM

Motion for Charging Order

Notice of Hearing

Charging Order

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

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H. DICKINSON, CLERK
BY *James Peterson*

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

Crayton Walker and Jeanne Walker, Plaintiffs, v. Gerald Bagley and The Jeremy, a Utah limited partnership, Defendants.	Motion for Charging Order Civil No. C85-3056 Judge Pat Bryan (Formerly Judge David Dee)
---	---

The Plaintiffs Crayton and Jeanne Walker hereby move the Court for a charging order pursuant to Utah Code Annotated section 48-1-25, upon the interest of the Defendant Gerald Bagley as general partner of a certain partnership named Jordan Acres, which is further identified as the limited partnership whose certificate is filed for record with the Salt Lake County Clerk as Partnership File No. 12519 (hereinafter, the "Partnership").

The Plaintiffs hold in this case an outstanding judgment against the Defendant Gerald Bagley, a general partner of the Partnership. The judgment is in the principal amount of \$19,742.00, with interest and fees, and was entered by the Court on June 28, 1985. That judgment remains unsatisfied.

In particular, the Plaintiffs Crayton and Jeanne Walker make application that the Court charge the interest of Gerald Bagley in the Partnership with payment of the amount of the judgment, being \$19,742.00, and that the Court order that all profits, capital, and surplus of Gerald Bagley in the Partnership shall be held to satisfy the judgment rendered and docketed in this case. The Plaintiffs further request that the Court order the Partnership, pursuant to section 48-1-25 of Utah Code Annotated, to make a full accounting to the Plaintiffs of:

- (1) The interest of the judgment debtor, Gerald Bagley, in the profits, losses, capital, and surplus of the Partnership;
- (2) The value of the Partnership's assets, both book value and appraised or estimated current value of all of its assets, the amount of its liabilities (with a reasonable itemization of the amounts of any significant liabilities of

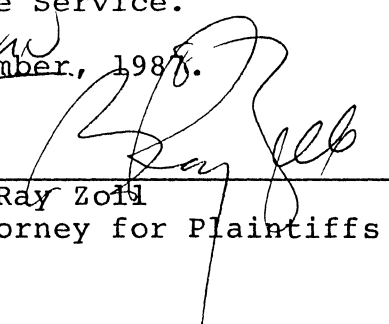
the Partnership), and the net worth of the Partnership;

(3) A report of all sources of income of the Partnership, the amount of income derived from each such source, and the expenses generated by and properly attributable to each such source of income;

(4) A report of all assets sold by the Partnership since entry of the Judgment on June 28, 1985, and a full report of all other significant changes in the financial position of the Partnership since entry of the Judgment.

The Plaintiffs further request that the Partnership provide to the Plaintiffs' a copy of its federal income tax returns for the years 1985 through 1987, inclusive, with the copy of the return for 1987 to be delivered to the Plaintiffs' within ten days of the date on which it is filed with the Internal Revenue Service.

Dated this 6 day of November, 1987.



B. Ray Zoll
Attorney for Plaintiffs

Mailing Certificate

I hereby certify that I mailed a correct copy of the foregoing Motion for Charging Order to Ralph Marsh,

attorney for the Defendant Gerald Bagley, 68 South Main
Street, Salt Lake City, UT 84101, on this 1st day of
~~November~~, 1987.

February

La Dell Austin

[FILMED]

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MAR 1 9 35 AM '88

Chambers, 2006

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

NOTICE

CRAYTON WALKER,)
)
Plaintiff,)
)
vs.)
)
GERALD BAGLEY; RALPH J. MARSH,)
JORDAN ACRES, a Utah Limited)
Partnership; RALPH J. MARSH as)
Trustee for MORTGAGE INVESTMENT)
TRUST; SALT LAKE COUNTY; and)
DOES 1-10)
)
Defendants.)

NOTICE OF HEARING

Civil No. C85-3056

(Judge Pat Bryan)

Please take notice that Defendant Gerald Bagley's
Objection to Charging Order will come on for hearing before
the Honorable Judge Bryan of the above-entitled Court on the
25th day of March, 1988 at 8:30 o'clock a.m. or
as soon thereafter as counsel may be heard.

DATED this 29th day of February, 1988.

ZOLL & BRANCH

[Signature]
B. Ray Zoll
Attorney for Plaintiff

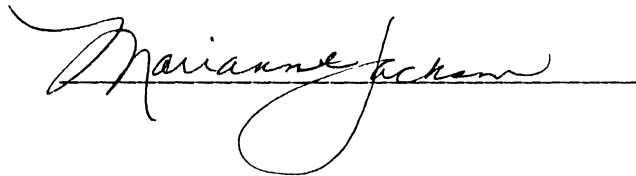
Feb 23/25
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MAILING CERTIFICATE

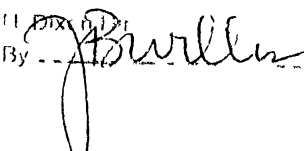
I hereby certify that I mailed a true and correct
copy of the foregoing this 29th day of February,
1988, postage prepaid to:

Ralph J. Marsh, Esq,
BACKMAN, CLARK, & MARSH,
800 McIntyre Building,
68 South Main Street,
Salt Lake City, UT 84101;

Karl L. Hendrickson,
Deputy County Attorney,
231 East 400 South,
Salt Lake City, UT 84111,

A handwritten signature in cursive script, reading "Marianne Jackson", written over a horizontal line.

RALPH J. MARSH, ESQ. A2092
BACKMAN, CLARK & MARSH
Attorneys for Defendant Bagley
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101
Telephone: 531-8300

JUN 24 1988
By 

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

CRAYTON WALKER and JEANNE WALKER,	:	
	:	
Plaintiffs,	:	<u>CHARGING ORDER</u>
vs.	:	
GERALD H. BAGLEY and THE JEREMY,	:	Civil No. C85-3056
a Utah limited partnership,	:	(Judge Pat B. Brian)
	:	
Defendants.	:	

THE MOTION of the plaintiffs Crayton and Jeanne Walker was heard by the Court pursuant to sufficient notice to the defendants on February 12, 1988. Following the hearing, plaintiffs submitted a proposed Charging Order to which defendant filed timely objections. In a further hearing on March 18, 1988, on objections to the Charging Order by the defendants by counsel Ralph Marsh, the Court entered an Order granting defendant's objections due to the inadvertent nonappearance of the plaintiffs. Later, on April 1, 1988, a hearing was again held on the objections of the defendant to the Charging Order and arguments were made by both counsel concerning the defendant's objections. At the second hearing, the Court denied the objections and ruled that a charging order should be entered.

On June 3, 1988, the Court heard the arguments of counsel on a motion by Walkers to compel compliance. It was then discovered that the most recent order in the file was the sustaining of the defendant's objections based on nonappearance. Being fully informed of all factual

and legal aspects of the merits of the motion and upon due consideration of the merits, the court determined to enter the prior Charging Order as follows. Therefore, for good cause, it is hereby:

ORDERED, ADJUDGED, and DECREED:

1. The interest of the defendant Gerald Bagley in a certain partnership named Jordan Acres is hereby made subject to a charging order as provided herein, pursuant to §48-1-25, Utah Code Annotated. The partnership named Jordan Acres (the "Partnership") is further identified as the limited partnership whose certificate is filed for record with the Salt Lake County Clerk as Partnership File No. 12519.

2. All profits, income, payments from the Partnership payable to Gerald Bagley, and any right of any kind to receive any asset from the Partnership, for any purpose, regardless of whether distributed from capital, profits, or surplus, or as an expense of the Partnership, shall be paid to and inure to the benefit of the plaintiffs Crayton and Jeanne Walker until the plaintiffs shall have received full satisfaction of their judgment in this case, including interest at the judgment rate until the date of payment, costs, and attorney's fees (the "Judgment").

3. Further, Jordan Acres shall make a full statement and accounting to the plaintiffs of:

(a) The interest of the judgment debtor Gerald Bagley in the profits, losses, capital, and surplus of the Partnership;

(b) The value of the Partnership's assets, determined either by appraisal or by good faith estimate of the Partnership, and the amount of the Partnership's liabilities (with a reasonable itemization of the amounts of any significant liabilities of the Partnership), and the net worth of the Partnership;

(c) A report of all sources of income of the Partnership, the amount of income derived from each such source, and the expenses generated by and properly attributable to each such source of income;

(d) A report of all assets sold or transferred by the Partnership since entry of the Judgment on June 28, 1985 and of any liens or interests created in the Partnership's property since entry of the

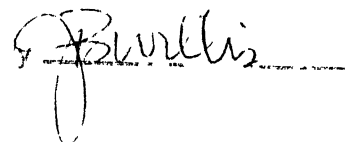
Judgment, and a full report of all other significant changes in the financial position of the Partnership since entry of the Judgment.

4. The Partnership shall also provide to the Plaintiffs a copy of the Partnership's federal income tax returns for the years 1985 through 1987, inclusive. The copy of the return for 1987, if not yet filed with the Internal Revenue Service, shall be delivered to the plaintiffs within ten days of the date on which it is filed with the Internal Revenue Service.

All of the objections to this Charging Order submitted by defendant are preserved and not waived but are denied by the court and no further hearing shall be required to preserve those objections.

DATED this 24 day of June, 1988.


DISTRICT JUDGE



CERTIFICATE OF MAILING

THIS IS TO CERTIFY that a true and correct copy of the foregoing Charging Order was mailed, postage prepaid, on the 10th day of June, 1988, to the following:

B. RAY ZOLL and
TOM D. BRANCH
Attorneys for Plaintiffs
5251 South Green Street, Suite 205
Salt Lake City, Utah 84123

